

DATED

2012

BETWEEN:-

(1)

AND

(2) SHROPSHIRE COUNCIL

AGREEMENT

Pursuant to Section 106 Town & Country Planning Act 1990

Relating to land at

Shropshire

SINGLE PLOT

TEMPLATE ONLY – NOT FOR COMPLETION



LEGAL AND DEMOCRATIC SERVICES
The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

THIS AGREEMENT is made the day of two thousand and twelve

BETWEEN:-

- (1) (the "Owner"); and
- (2) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the "Council")

WHEREAS

- (1) The Owner is the beneficial owner in fee simple in possession free from encumbrances of land at currently registered at the Land Registry under title number SL (the "Title") being shown edged red on the plan annexed hereto (the "Land")
- (2) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (the "Act") for the area within which the Land is situated and by whom the obligations in this Agreement are enforceable
- (3) On or about the Owner applied to the Council for planning permission under reference number for the on the Land in accordance with the specification and plans lodged with that application (the "Development") on the Land
- (4) The Council is prepared to grant conditional planning permission in the form of the draft annexed hereto and marked "A" (the "Planning Permission") following the execution of this Agreement as a deed without which the Planning Permission would not be granted
- (5) The definitions provided in the Schedule apply throughout the Agreement

NOW THIS DEED WITNESSES as follows:-

1. This Agreement is made in pursuance of Section 106 of the Act and Sections 111 and 120 Local Government Act 1972 and all other enabling legislation and contains planning obligations for the purposes of the Act
2. The Owner covenants with the Council:-
 - 2.1 to observe the covenants restrictions and obligations specified in this Agreement and in the Schedule hereto and acknowledges that the Land shall be bound by the covenants restrictions and obligations herein contained;
 - 2.2 that the Development shall comply in every respect with the plans and specifications lodged with the Council and with the conditions of the Planning Permission; and
 - 2.3 that no accommodation additional to that for which the Planning Permission has been granted shall be created internally at ground floor level or first floor level or within the roof space of the Dwelling unless specifically agreed in writing by the Council; and
 - 2.4 that the Dwelling is intended to and will be occupied by the Owner as his sole and/or principal residence unless otherwise agreed in writing by the Council in accordance with sub-clause 2.1 of the Schedule
3. In consideration of the covenants by the Owner herein the Council has resolved to grant the Planning Permission
4. If the Planning Permission expires within the meanings of Section 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Owner this Agreement shall cease to have effect (save for payment of legal costs) (but without prejudice to the rights of either party against the other in respect of any antecedent breach)
5. The obligations in this Agreement (save for the provisions of clause 7 and 9) shall not come into effect until the Planning Permission is implemented by the carrying out of a material operation as defined in section 56(4) of the Act

6. Neither the Owner nor any successor in title shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after they have parted with their interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
7. The Owner shall pay the Council's legal costs in the sum of £ in connection with the preparation and execution of this Agreement and in connection with any of the procedures that the Council has to undertake pursuant to the terms of this Agreement
8. This Agreement is a local land charge and shall be registered as such by the Council
9. The Owner shall:-
 - 9.1 within seven days of completion of this Agreement apply to register this Agreement in the Charges Register of the Title and to register the following Restriction in the Proprietorship Register of the title of the Land:-

“No disposition of the registered estate by the proprietor of the registered estate shall be registered without the written consent signed by Shropshire Council of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND” (the “Restriction”);
and
 - 9.2 provide to the Council as soon as is reasonably possible a copy of the Title following completion of the registration referred to in this clause
10. The Owner acknowledges that the Dwelling may be subject to additional requirements from lenders in the event that they wish to secure a mortgage or other secured lending against the Dwelling including but not limited to the provision of architect's supervisory certificates or structural defects liability insurance which is likely to be required if such finance is sought within 10 years of the date of construction of the Dwelling
11. **IT IS HEREBY AGREED AND DECLARED**

In default of resolution of any dispute claim or question within three months of the same arising any dispute claim or question arising out of or relating to this Agreement shall be referred for determination in accordance with the following provisions:

- (a) where such dispute relates to the construction of this Agreement it shall be referred to a Solicitor or Barrister agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Law Society whose decision shall be final; and
- (b) where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default thereof appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers whose decision shall be final; and
- (c) where such dispute relates to the valuation of land or property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default thereof appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall be final

12. In this Agreement where the context so requires:

- (a) the expression the "Council" and the "Owner" shall include their respective successors in title and assigns and where there are two or more persons included in the expression the Owner covenants expressed to be made by the Owner shall be deemed to be made by such persons jointly and severally
- (b) references to clauses and Schedules are references to clauses and Schedules in this Agreement except where otherwise specified
- (c) title headings to the clauses and Schedules are for convenience only and shall not affect the interpretation of this Agreement
- (d) references to any statute or statutory instrument shall except where otherwise specifically provided include references to any statutory modifications or re-enactment thereof for the time being in force
- (e) all notices requests demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class recorded delivery letter or facsimile transmission to the party to which such notice request demand or other written

communication is to be given or made and shall be deemed to have been served as follows:

- (i) if posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom; or
- (ii) if sent by facsimile transmission at the time of the successful transmission

PROVIDED that if the means of service shall be outside normal working hours such service shall be deemed to have taken place upon the next working day and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and stamped and delivered into the custody of the postal authority in a pre-paid recorded delivery envelope and has not been returned undelivered or that the facsimile was successfully transmitted as the case may be

13. It is not intended that any third party should have the right to exercise or enforce or take benefit from any of the provisions of this Agreement for the purposes of the Contracts (Right of Third Parties) Act 1999 save as may be expressly mentioned herein

Schedule

1. **Definitions**

The following definitions apply to the interpretation of this Agreement:-

- 1.1 **“Affordable Rent”** means a level of rent notified to the Owner by the Council being no greater than the rent that a member of the Shropshire Housing Partnership would charge for a property equivalent in size and location to the Dwelling (which shall be no more than 80% of the open market rental value or the maximum amount of local housing allowance payable by the Council for the Dwelling if this is lower)
- 1.2 **“Council Area”** means the administrative area for the Council including any later variation to such area by any alteration of the administrative boundaries of the Council
- 1.3 **“Dwelling”** means the dwelling house to be constructed as part of the Development on the Land including any garage or other structure which may be attached or integral to it but excluding any garage or other structure not attached to the dwelling house
- 1.4 **“Formula Price”** means the sum which is sixty per cent (60%) of the Open Market Value of the Dwelling (excluding any extensions or conversions or alterations to the Development)
- 1.5 **“Initial Qualifying Person”** means a person who is considered in the reasonable opinion of the Council to be in Local Housing Need and/or in the reasonable opinion of the Council complies with the Other Considerations criteria
- 1.6 **“Local Area”** or **“Area”** means a place either:-
- (i) in the administrative area of the Parish of _____ (the “Parish”) within which Parish the Land is situated including any later variation to such area by an alteration of the administrative boundaries of the Parish; or
 - (ii) within a ten (10) kilometre radius of the Land (excluding from that radius settlements exceeding a population of three thousand (3,000)) when applied in connection with a sale or letting made by the Owner in accordance with the provisions of Clause 2 of this Schedule
- 1.7 **“Local”** or **“Locally”** means having a connection with the Area
- 1.8 **“Local Housing Need”** normally exists when a person can demonstrate to the Council a need to be housed Locally in accordance with the following criteria:-

1.8.1 lacks his/her own housing or lives in housing which is agreed by the Council in its absolute discretion to be inadequate or unsuitable to meet his/her existing or future requirements whether because of its tenure size type design amenity location condition security or costs; or

1.8.2 is unlikely to be able to meet his/her housing needs in the housing market of the Area without some assistance; and

1.8.3 (i) he/she must constitute part of a separately identifiable household; and
(ii) the members of the household must together be unable to either afford or secure a suitable dwelling available to purchase on the open market either within the Parish or a 5 kilometre radius of the site (excluding from that radius settlements exceeding a population of three thousand (3,000))

PROVIDED THAT the criteria in this sub-clause 1.8.3(ii) will have been met if no suitable accommodation of the right type size design amenity location and price in the Area has become available within the last two years; and

1.8.4 at least one adult member of the household must have Strong Local Connections **EXCEPT** as otherwise provided for within the provisions of Clause 2 of this Schedule

1.9 **“Mortgagee in Possession”** means a person or body which has entered into a mortgage in respect of the Dwelling and has taken action following a default by the borrower in respect of the repayments due under that mortgage and shall include any receiver appointed by any such mortgagee

1.10 **“Open Market Value”** means the price which the Dwelling (excluding any extensions or conversions or alterations to the Development) would fetch on the open market by a willing vendor to a willing purchaser unfettered by the terms of this Agreement with that value being the average of no less than two written valuations obtained by the Owner from two Valuers and submitted to the Council by the Owner as part of the Sales Marketing Plan

1.11 **“Other Considerations”** exist where a person seeking to reside in the Dwelling is presently living in accommodation which appears to be both adequate and affordable the Council will in deciding whether or not to permit such residency (which decision it shall make at its sole discretion) consider the following factors:

1.11.1 Whether or not the person needs to live in the Parish/Area for employment reasons; or

1.11.2 Whether or not the person needs to live in the Parish/Area to:

1.11.2.1 sustain a current role of active community involvement in the Parish/Area; or

1.11.2.2 provide or receive day to day care or support to or from a close relative living in the Parish/Area; or

1.11.2.3 provide or receive day to day childcare assistance to or from a close relative living in the Parish/Area;

PROVIDED THAT in the sub-clauses 1.11.2.2 to 1.11.2.3 a close relative shall include someone to whom the person is in a relationship described in sub-clause 1.12 (ii) of this Schedule; and

1.11.3 Whether there is other suitable and affordable accommodation currently available to purchase in the Parish/Area or within a 5 kilometre radius of the site (excluding from that radius settlements exceeding a population of three thousand (3,000)) which he/she is able to secure that would satisfy the specific needs and considerations arising from sub-clauses 1.11.1 to 1.11.2.3

1.12 **“Qualifying Family Member”** means a member of the family of a Qualifying Person who demonstrates to the Council’s reasonable satisfaction that he/she meets the criteria of being a Qualifying Person and who is therefore entitled by virtue of the terms of this Agreement to occupy the Dwelling and is either:-

(i) the spouse or partner of the Qualifying Person or that person and the Qualifying Person live together as partners; or

(ii) their parent grandparent child or step-child son/daughter-in-law grandchild brother sister uncle aunt nephew or niece

1.13 **“Qualifying Person”** means an Initial Qualifying Person or a Secondary Qualifying Person

1.14 **“Registered Provider”** means a housing association or registered social landlord or other body recognised by the Council as a provider of affordable housing in accordance with the provisions of the Housing and Regeneration Act 2008

- 1.15 **“Sale Marketing Plan”** Means written evidence provided by the Owner to the Council demonstrating to the Council’s reasonable satisfaction that the Dwelling will actively be offered for sale to Qualifying Purchasers at the Formula Price and advertised through at least one selling agent advertising other properties for sale to the general public in the Area
- 1.16 **“Secondary Qualifying Person”** means any person who is resident within or employed within or has family connections within the Council Area who lacks his/her own housing or lives in housing which is agreed by the Council in its absolute discretion to be inadequate or unsuitable to meet his/her existing or future requirements whether because of its tenure size type design amenity location condition security or cost
- 1.17 **“Shropshire Housing Partnership”** means any Registered Provider or constituted community land trust or other housing provider or registered charity working with the Council to provide affordable housing in the Council Area
- 1.18 **“Strong Local Connections”** normally exist where a person satisfies at least two of the descriptions set out in sub-clause 1.18.1 to 1.18.7 inclusive:-
- 1.18.1 his/her parents were permanent residents in the Parish/Area at the time of his/her birth;
- 1.18.2 he/she was in permanent residence in the Parish/Area for any period of five years as a child attending a Local school (or who for special reasons attended a school outside the Area but would have been expected to attend a Local school but for those special reasons);
- 1.18.3 he/she is currently lawfully resident in the Parish/Area and has lived there for at least the last five years or if not currently resident in the Parish/Area has previously done so at some point for 15 continuous years as an adult;
- 1.18.4 he/she is currently employed in the Parish/Area or routinely carries out self-employed work within a 5 kilometre radius of the Development or has a confirmed offer of permanent employment within a 5 kilometre radius of the Development which he/she cannot accept unless he/she is resident in the Parish/Area;
- 1.18.5 he/she can demonstrate to the reasonable satisfaction of the Council active community involvement in the Parish/Area sustained for at least the previous 2 years; or are

determined by the Parish Council as having some other form of strong connection with the local community and/or its hinterland.

1.18.6 he/she has a parent currently living in the Parish/Area or has another close family member living in the Parish/Area who they either provide care or support to or receive care and support from;

1.18.7 in the case of a person over the age of 55 he/she has a close relative currently living in the Parish/Area or has some other strong connection with the Area (that is acceptable to the Council or to the Parish / Town Council)

PROVIDED THAT in this sub-clause 1.18.7 a close relative shall include someone to whom the person is in a relationship described in sub-clause 1.12 (ii) of this Schedule

1.19 **“Suitable Offer”** means a written offer made by a Qualifying Person or the Council or a member of the Shropshire Housing Partnership or a person pursuant to sub-clause 2.9 of this Schedule to purchase the Dwelling from the Owner at the Formula Price and in accordance with the terms prescribed in sub-clause 2.7 of this Schedule

1.20 **“Valuer”** means an independent qualified valuer accredited by the Royal Institution of Chartered Surveyors

2. **Sale or letting by the Owner**

2.1 The Owner shall not let the Dwelling (or offer so to do) other than to a Qualifying Person and at no more than the Affordable Rent

2.2 The Owner shall not sell the Dwelling (or offer so to do) other than in accordance with the agreed Sale Marketing Plan at the Formula Price and to a Qualifying Person or to the Council or to a body nominated by the Council from the Shropshire Housing Partnership or to a person pursuant to sub-clause 2.9 of this Schedule

2.3 Before being permitted to market the Dwelling the Owner shall first provide the Council with a Sale Marketing Plan evidencing the Formula Price and stating the actions to be taken to advertise it for sale to Qualifying People and such a document shall serve as formal written notice to the Council of the Owner’s intention to dispose of the Dwelling

2.4 The Council shall within two weeks of receipt of a Sale Marketing Plan grant written consent to the Owner (or be deemed to have granted the same) for marketing of the Dwelling to commence in accordance with the provisions of that document

- 2.5 For a period of no less than twelve weeks from receipt of the Council's consent under sub-clause 2.4 of this Schedule only Initial Qualifying Persons with Strong Local Connections to either the Parish or Local Area shall be permitted to enter into terms with the Owner to purchase the Dwelling in accordance with sub-clause 2.7 of this Schedule
- 2.6 After a period of twelve weeks from receipt of the Council's consent under sub-clause 2.4 of this Schedule Secondary Qualifying Persons or the Council or a body nominated by the Council from the Shropshire Housing Partnership shall also be permitted to enter into terms with the Owner to purchase the Dwelling in accordance with sub-clause 2.7 of this Schedule
- 2.7 Any sale of the Dwelling under sub-clause 2.2 of this Schedule shall be on the following terms:-
- (a) the purchaser shall make a Suitable Offer to the occupier which shall be no more than the Formula Price;
 - (b) the purchaser shall covenant with the Council to observe and perform the obligations set out in this Agreement;
 - (c) the Dwelling shall be sold with vacant possession;
 - (d) the sale shall be subject to the formal exchange of contracts within four weeks of the Suitable Offer being made with a completion date being no more than four weeks thereafter (or such other date for completion as may be agreed as binding between the parties); and
 - (e) the contract for sale shall be subject to the edition of the Standard Conditions of Sale current at the date of the Suitable Offer
- 2.8 In the event that the Dwelling is purchased by the Council or by a nominated member of the Shropshire Housing Partnership the purchaser may at its discretion either sell the Dwelling in accordance with the provisions of Clause 2 of this Schedule or retain it for use as affordable housing
- 2.9 If after a period of sixteen weeks from receipt of the Council's consent under sub-clause 2.4 of this Schedule the Dwelling has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-clause 2.7 of this Schedule the Owner shall be entitled to sell the Dwelling to any person without restriction as to their eligibility but otherwise still in accordance with the terms of sub-clause 2.7 of this Schedule

- 2.10 If after a period of twenty two weeks from receipt of the Council's consent under sub-clause 2.4 of this Schedule the Dwelling has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-clause 2.7 of this Schedule the Owner may apply in writing to the Council for the Formula Price and all other provisions of this Agreement to be removed from the Land and Development
- 2.11 The Council shall within two weeks of receipt grant the Owner's application for the Formula Price and all other provisions of this Agreement to be removed and in the event that the sale price exceeds the Formula Price the Owner shall on completion of the sale pay to the Council fifty percent (50%) of the difference between the sale price and the Formula Price which sum the Council will use to facilitate the provision of affordable housing elsewhere in the Council Area and the Council shall remove the provisions of this Agreement from the local land charges register in connection with the Land and Development and will as soon as possible (following receipt of payment) consent to the removal of the land registry title Restriction

3. Sale or letting by Mortgagee in Possession / Mortgagee Protection Clause

- 3.1 A Mortgagee in Possession of the Dwelling shall not sell it other than as provided for within sub-clauses 3.2 and 3.3 of this Clause
- 3.2 The Mortgagee in Possession shall be free to sell the Dwelling to any purchaser PROVIDED THAT the sale price shall be no more than the Formula Price or the sum necessary to recoup all of the mortgage debt and costs (whichever shall be the higher) unless the sale is pursuant to sub-clause 3.3 of this Clause
- 3.3 If after a period of eight weeks from taking possession of the Dwelling (with notice in writing having been sent by recorded signed for post to the Council by the Mortgagee in Possession on the commencement of that period or as soon as possible thereafter) it has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-clause 3.2 of this Clause the Mortgagee in Possession shall be entitled to sell the Dwelling to any purchaser at Open Market Value and free from the restrictions contained in this Agreement but subject to payment (after recouping all of the mortgage debt and costs) to the Council by the Mortgagee in Possession all of the difference between the sale price and the Formula Price (subject to the sale price exceeding the Formula Price) which sum the Council shall use to facilitate the provision of affordable housing elsewhere in the Council Area

3.4 Following completion of a sale by the Mortgagee in Possession pursuant to sub-clause 3.3 of this Clause the Council shall within two weeks remove the provisions of this Agreement from the local land charges register in connection with the Land and also consent to removal of the land registry title Restriction

4. **Disposal by Inheritance**

4.1 Any disposal of the Dwelling by way of a Will (and/or any other form of testamentary disposition) or by intestacy to either a Qualifying Family Member and/or any other Qualifying Person and/or any other member of the family of the Owner shall not be prohibited by the terms of this Agreement (subject to satisfactory evidence in writing to the Council of the same)

4.2 A member of the family of the Owner who inherits the Dwelling by way of a Will (and/or any other form of testamentary disposition) or by intestacy and who has occupied the Dwelling as his/her sole and/or principal residence prior to the death of the Owner shall be deemed by the Council to be a Qualifying Family Member entitled by virtue of the terms of this Agreement to own and continue to occupy the Dwelling

4.3 A member of the family of the Owner who inherits the Dwelling by way of a Will (and/or any other form of testamentary disposition) or by intestacy and who is not deemed by the Council (acting reasonably) to be a Qualifying Family Member must either sell it or let it in accordance with the provisions of Clause 2 of this Schedule

5. **Consent**

5.1 The consent of the Council for the purpose of the Restriction to any proposed sale or lease shall be granted where the Council is satisfied that the proposed sale or lease is to a Qualifying Person or to the Council itself or to a body nominated by the Council from the Shropshire Housing Partnership or is otherwise pursuant to sub-clauses 2.9 or 2.10 or 3.2 or 3.3 of this Schedule and that all other provisions of this Agreement have been complied with in relation to the Dwelling

5.2 The consent of the Council for the purpose of the Restriction shall be issued as soon as possible and shall not be unreasonably withheld following:-

- (i) completion (subject to evidence of the same in writing to the Council) of a sale of the Dwelling in accordance with sub-clauses 2.2 or 3.1 of this Schedule; or
- (ii) the assent or transfer of the Dwelling in accordance with Clause 4 of this Schedule (subject to evidence in writing of the same to the Council); or

- (iii) completion of a mortgage obtained by the Owner to enable them to either purchase or obtain finance to build the Dwelling (subject to evidence in writing of the same to the Council); or
- (iv) completion of the sale or lease of the Land prior to this Agreement coming into effect (in accordance with the provisions of Clause 5 of the Deed to this Agreement)

DRAFT SECTION 106 AGREEMENT

IN WITNESS whereof the parties have executed this Agreement as their deed

SIGNED as a **Deed** by)

)

in the presence of:-)

Witness' signature

Witness' name (block letters):

Address:

.....

Occupation:

The **COMMON SEAL** of)

SHROPSHIRE COUNCIL)

was hereunto affixed)

in the presence of:-)

Authorised Signatory

DRAFT SECTION 106 AGREEMENT